

REMARKS

Responsive to the Office action mailed December 16, 2005, applicant request entry of the attached Terminal Disclaimer, foregoing amendments, consideration of the following remarks and reconsideration of the rejections set forth in said office action.

Claims 1, 4-7 were objected to for various formalities. Claims 1 and 4-7 have been amended to correct the identified informalities.

Claims 1-7 were rejected under 35 USC 102(b) as anticipated by, or in the alternative, under 35 USC 103(a) as obvious over Auger. Applicants submit that Auger fails to anticipate or render obvious the present invention.

The present invention is directed toward the pesticidal treatment of various materials by application via nebulization of at least one volatile sulphur compound. The pesticidal treatment of the present invention is applied in a liquid state via nebulization. Auger et al. fails to disclose, either expressly or by implication, the application of such compounds in the liquid state via nebulization.

Auger et al. discloses the use of thiosulfinate as substitute fumigants for methyl bromide. The disclosure teaches application of the thiosulfinate as "...fumigants (acting in the gaseous state)..." (emphasis added). See Auger et al. at page 1, section 1. Auger teaches that only fumigants in the gaseous state are likely to diffuse through, and into, large masses of seed. Thus, Auger et al. teaches that fumigation in the gaseous state is necessary in the use of the disclosed thiosulfinate.

The present invention is directed toward the use of volatile sulphur compounds as pesticides when applied via nebulization. Application via nebulization avoids the problem of slow diffusion into mass materials that occur with gas phase applications. Further, application via nebulization in a liquid phase avoids the trouble or expense of providing a sealed area or container in which to apply the pesticide. Application via nebulization in a liquid state allows for application of the sulphur compounds directly on the site where they have to act. This avoids problems of slow gas diffusion or gas "drift" and/or

escape.

Applicants respectfully submit that Auger et al fails to anticipate or render obvious such an application when they teach that only fumigants applied in the gaseous state are likely to diffuse through and into large masses of seeds.

Claims 1-7 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of copending application no. 10/472,083. Attached hereto is a terminal disclaimer in accordance with 37 CFR 1.321(c) with respect to serial number 10/472,083. Applicants submit that upon entry of the attached terminal disclaimer, the rejection under the judicially created doctrine of obviousness-type double patenting should be withdrawn.

In view of the foregoing remarks, applicant respectfully submits that claims 1-7 of the present application are in condition for allowance and prompt favorable action is solicited.

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Respectfully submitted,



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